



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 19, 2003

Ms. J. Middlebrooks
Assistant City Attorney
Dallas Police Department
1400 South Lamar Street #300A
Dallas, Texas 75215-1801

OR2003-3338

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181320.

The Dallas Police Department (the "department") received a request for certain internal affairs investigations, any racial profiling complaints filed in 2003, and a specified internal affairs complaint. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We assume that the department has released the remaining requested information to the extent that it exists. If it has not, it must do so at this time. *See* Gov't Code §§ 552.021, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances). We have considered the exceptions you claim and have reviewed the submitted representative sample of information.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. A portion of the submitted information constitutes

¹ We assume that the "sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

a medical record, access to which is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).

Section 159.002(c) requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the submitted information that constitutes a medical record that is subject to the MPA. This information may be released only in accordance with the MPA.

We next note that criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990); *see* 28 C.F.R. § 20.21(c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself"). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another

criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See Open Records Decision No. 565 (1990).* Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. However, the definition of CHRI does not encompass driving record information maintained by the DPS. *See Gov't Code* § 411.082(2)(B). Accordingly, to the extent that the submitted documents contain any information that is confidential under the federal regulations or subchapter F of chapter 411 of the Government Code, the department must withhold such information under section 552.101 of the Government Code.

Further, the submitted information includes fingerprint information that is subject to sections 559.001, 559.002, and 559.003 of the Government Code. These sections provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
 - (A) the individual consents to the disclosure;
 - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
 - (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 559.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

It does not appear to this office that section 559.002 permits the disclosure of the submitted fingerprint information to the requestor. Therefore, the department must withhold this information under section 559.003 of the Government Code.

You also contend that the telephone number of a 9-1-1 caller from the submitted call for service is confidential under section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 9-1-1 telephone numbers and addresses. Health & Safety Code § 772.401 *et seq.* Therefore, if the submitted call for service involves an emergency communication district subject to section 772.118, 772.218, or 772.318, we agree that the caller's telephone number is excepted from public disclosure based on section 552.101 of the Government Code as information deemed confidential by statute.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance, designation of beneficiary of employee's retirement benefits are generally confidential), 545 (1990) (common-law privacy protects personal financial information). However, in this instance, we find that the submitted documents contain no personal financial information that

is both intimate and embarrassing and of no legitimate public interest. Therefore, you may not withhold any information under section 552.101 in conjunction with the common-law right of privacy.

You claim that some information is excepted under section 552.108 of the Government Code. Section 552.108 states that an internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement is excepted from required public disclosure if release of the internal record or notation would interfere with law enforcement. Gov't Code § 552.108(b)(1). Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You argue that release of police officers' mobile telephone and/or pager numbers "would interfere with law enforcement because it would interfere with the ability of these officers to perform their job duties," and that "[o]fficers need these particular lines of communication available to take care of their immediate needs in the field." Furthermore, you argue that "[t]he general public already has access to the department through its departmental telephone numbers and 9-1-1 system," and "[i]t would serve little or no purpose for the general public to have access to these numbers."

In Open Records Decision No. 506 (1988), this office determined that the statutory predecessor to section 552.108 protects from required public disclosure the cellular mobile phone numbers assigned to public and private vehicles used by county officials and employees with specific law enforcement responsibilities. Accordingly, the department may withhold the mobile and/or pager telephone numbers pursuant to this exception.

You further claim that the submitted documents contain information excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information relating to a driver's license, license plate, or motor vehicle title or registration issued by an agency of this state. Therefore, the department must withhold under section 552.130 the driver's license and motor vehicle information you have marked within the submitted documents to the extent that the relevant information was issued in Texas. We have marked some additional information that must also be withheld under section 552.130 if issued in Texas.

Finally, we note your contention that some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In

making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Therefore, the department need only provide access to the copyrighted information, if any; it need not furnish a copy.

In summary, the medical record we have marked may only be released in accordance with the MPA. To the extent that the department maintains CHRI that is confidential under chapter 411 of the Government Code, it must be withheld under section 552.101. You must withhold the submitted fingerprint information under section 559.003 of the Government Code. If the submitted call for service involves an emergency communication district subject to section 772.118, 772.218, or 772.318, the caller's telephone number must be withheld under section 552.101. You may withhold the mobile and/or pager telephone numbers of police officers under section 552.108. You must withhold Texas driver's license and motor vehicle information under section 552.130. The remaining requested information must be released, but the department must comply with the copyright law and is not required to furnish a copy of any information that is copyrighted. As we are able to make these determinations, we need not address your remaining claim.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

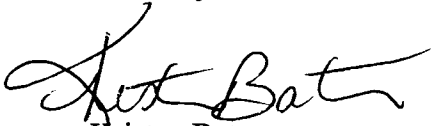
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", written in a cursive style.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 181320

Enc. Submitted documents

c: Ms. Tanya Eiserer
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)